

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

**S2 21 Cr. 412 (JSR)**

Israel Garcia,

*Defendant.*

**Order re: Attorney-Client Privilege Waiver**

WHEREAS Defendant Israel Garcia has moved for a new trial pursuant to Rule 33 of the Federal Rules of Evidence based, at least in part, on the ground of ineffective assistance of counsel; and

WHEREAS the Government, after reviewing the motion papers, has concluded that in order to respond effectively to the defendant's motion, it is necessary for the Government to be permitted to speak with Petitioner's former trial counsel, Avraham Moskowitz ("Counsel") concerning the allegations in the defendant's motion, and, if necessary, obtain an affidavit from Counsel concerning those allegations; and

WHEREAS the Court, after reviewing the motion papers, is satisfied that it is necessary for the Government to communicate with and obtain the testimony of Counsel in order to respond to the motion; and


WHEREAS by making the motion, the movant has waived his attorney-client privilege with Counsel as a matter of law; and

WHEREAS the Court is cognizant that, absent court order or informed consent, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof.

Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim*,

IT IS HEREBY ORDERED that Counsel is permitted to communicate with the Government and <sup>provide information,</sup> ~~give testimony~~, including in the form of an affidavit, <sup>but solely</sup> addressing the allegations of ineffective assistance of counsel made by movant <sup>and the underlying</sup> ~~circumstances relating thereto~~

Dated: New York, New York  
February 7, 2024

  
HONORABLE JED S. RAKOFF  
UNITED STATES DISTRICT JUDGE